

FLSA QUESTIONNAIRE

TO AID IN THE DETERMINATION OF FLSA STATUS EXEMPT/NON-EXEMPT.

**DEVELOPED FROM THE FLSA REGULATIONS, PART 541: DEFINING THE
TERMS - EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL AND OUTSIDE
SALES.**

**Division of Administration
Office of Human Resources
225/342-6060**

EMPLOYEE NAME: _____

IMMEDIATE SUPERVISOR NAME: _____

SECTION: _____

JOB TITLE: _____

POSITION NO.: _____

FLSA STATUS: **Exempt** _____ **Non-Exempt** _____

I discussed this with employee on: _____
DATE

Copy received by employee on: _____
DATE

SUPERVISOR SIGNATURE: _____

EMPLOYEE SIGNATURE: _____

EXEMPT FROM FLSA OVERTIME PROVISIONS

I. EXECUTIVE CHECKLIST

An employee who meets either the **“SHORT TEST”** or the **“LONG TEST”** for executives is exempt.

A. SHORT TEST QUESTIONS: An employee **must meet all** of the following requirements to be exempt:

1. Is his/her weekly salary \$250.00 or more, (\$13,000/yr; \$1083.33/mo) exclusive of board, lodging, or other facilities?
2. Does he/she primarily manage the department, agency, section, unit or other subdivision which is permanent and customarily recognized?
3. Does he/she customarily and regularly direct/supervise 2 or more other employees (does not include lead worker type of positions)?

If the answers to **A-1, A-2, and A-3** are yes, the employee is designated exempt and you need go no farther.

B. LONG TEST QUESTIONS: An employee **must meet all** of the following requirements to be exempt:

1. Does he/she primarily manage the department, agency, section, unit or other subdivision which is permanent and customarily recognized?
2. Does he/she customarily and regularly direct the work of 2 or more other employees (does not include lead worker type of positions)?
3. Does he/she have the authority to hire, fire and promote or are his/her suggestions and recommendations as to the hiring and firing and as to the advancement and promotion and other changes of status given particular weight?
4. Does he/she normally and recurrently (not occasionally) exercise discretionary powers in the day-to-day performance of his/her duties?
5. Does he/she spend 20% or less of his/her work time in activities not closely related to the items listed above?
6. Is he/she compensated on a salary basis at a rate of at least \$155.00 per week (\$8060/yr; \$671.67/mo)?

If the answers to **B-1, B-2, B-3, B-4, B-5, and B-6** above are yes, then the employee is designated as exempt.

FOOTNOTES
“EXECUTIVE CHECKLIST”

- (1) Discretion means comparison and evaluation of possible courses of conduct, followed by a decision; independent choice, free from immediate direction or supervision with respect to matters of significance.
- (2) In order to properly classify an individual as an executive he must be more than merely a supervisor of two or more employees; nor is it sufficient that he merely participates in the management of the unit. He must be in charge of and have as his primary duty the management of a recognized unit which has a continuing function.
- (3) It is generally clear that work such as the following is exempt work when it is performed by an employee in the management of his department or the supervision of the employees under him:
 - a. Interviewing, selection and training of employees.
 - b. Setting and adjusting rates of pay and hours of work for employees.
 - c. Directing the work of employees.
 - d. Maintaining production records for use in supervising or control.
 - e. Appraising efficiency for the purpose of recommending promotions or other status changes.
 - f. Handling complaints, grievances and discipline.
 - g. Planning the work of other employees.
 - h. Determining techniques to be used in the work process.
 - i. Apportioning work among workers.
 - j. Determining the type of materials, supplies, machinery or tools to be used.
 - k. Controlling the flow and distribution of material and supplies.
 - l. Providing for safety of employees and property.
- (4) The words "customarily and regularly" regarding the exercise of discretion signify a greater frequency than occasional, but less than constant.

Working foremen, "strawbosses," or gang leaders who work alongside the workers doing production tasks are not considered exempt employees under the long test, but may well qualify under the short test. (WH Publication 1281; 541.115)

Data processing related occupations are discussed in WH Publication 1281, sections 541.205 (c)(7), 541.303, 541.207 (c)(7), and 541.312.

EXEMPT FROM FLSA OVERTIME PROVISIONS

II. ADMINISTRATIVE CHECKLIST

An employee who meets either the **“SHORT TEST”** or the **“LONG TEST”** for administrators is exempt.

A. SHORT TEST QUESTIONS: An employee **must meet all** of the following requirements to be exempt:

1. Is his/her weekly salary least \$250 per week (\$13,000/year; \$1083.33/month) exclusive of board, lodging, or other facilities?
2. Does he/she primarily perform office or non-manual work directly related to management policies or general business operations?
3. Does his/her primary duty include work requiring the exercise of discretion and independent judgment?

If the answers to **A-1, A-2, and A-3** are yes, the employee is designated exempt and you need go no farther.

B. LONG TEST QUESTIONS: An employee **must meet all** of the following requirements in order to be exempt:

1. Do his/her duties primarily consist of non-manual or office work directly related to management policies or general business operations?
2. Does he/she customarily and regularly exercise discretion and independent judgment?
3. Does he/she:
 - a. Regularly and directly assist a person employed in a bona fide executive or administrative capacity; or
 - b. Perform under only general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; or
 - c. Execute special assignments and tasks under only general supervision?
4. Does he/she devote at least 80 percent of hours worked in the workweek to activities directly or closely related to performance of administrative work?
5. Is he/she paid at least \$155 per week (\$8060 per year; \$671.66 per month) exclusive of board, lodging, or other facilities?

If the answers to **B-1, B-2, B-3, B-4, and B-5** are yes, the employee is designated exempt.

FOOTNOTES
“ADMINISTRATIVE CHECKLIST”

Of the three FLSA exemptions, the administrative exemption is perhaps the most vague and subject to differing interpretation. Thus, it is worthwhile for state managers to consider carefully which employees may be exempt from FLSA coverage due to the administrative exemption.

Three types of employees are described in the regulations who, if they meet the other tests provided, qualify for exemptions as Administrative employees.

1. **Executive and administrative assistants:**

The first type is the assistant to a proprietor or to an executive or administrative employee. In modern industrial practice there has been a steady and increasing use of persons who assist an executive in the performance of his duties without themselves having executive authority. Typical titles of persons in this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, administrative assistant and, in retail or service establishments, assistant manager and assistant buyer. Generally speaking, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence, and interviews must be delegated.

2. **Staff employees:**

Employees included in the second alternative in the definition are those who can be described as staff rather than line employees, or as functional rather than departmental heads. They include among others employees who act as advisory specialists to the management. Typical examples of such advisory specialists are tax experts, insurance experts, sales research experts, wage-rate analysts, investment consultants, foreign exchange consultants, and statisticians.

Also included are persons who are in charge of a so-called functional department, which may frequently be a one-man department. Typical examples of such employees are credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

3. **Those who perform special assignments:**

The third group consists of persons who perform special assignments. Among them are to be found a number of persons whose work is performed away from the employer's place of business.

Typical titles of such persons are lease buyers, field representatives of utility companies, location managers of motion picture companies, and district gaugers for oil companies. It should be particularly noted that this is a field which is rife with honorific titles that do not adequately portray the nature of the

employee's duties. The field representative of a utility company, for example, may be a "glorified serviceman."

This classification also includes employees whose special assignments are performed entirely or partly inside their employer's place of business. Examples are special organization planners, customers' brokers in stock exchange firms, so-called account executives in advertising firms and contact or promotion men of various types.

Job titles insufficient as yardsticks.

1. The employees for whom exemption is sought under the term "administrative" have extremely diverse functions and a wide variety of titles. A title alone is of little or no assistance in determining the true importance of an employee to the employer or his exempt or nonexempt status under the regulations in subpart A of this part. Titles can be had cheaply and are of no determinative value. Thus, while there are supervisors of production control (whose decisions affect the welfare of large numbers of employees) who qualify for exemption under section 13(a)(1), it is not hard to call a rate setter (whose functions are limited to timing certain operations and jotting down times on a standardized form) a "methods engineer" or a "production-control supervisor."
2. Many more examples could be cited to show that titles are insufficient as yardsticks. As has been indicated previously, the exempt or nonexempt status of any particular employee must be determined on the basis of whether his duties, responsibilities, and salary meet all the requirements of the appropriate section of the regulations in subpart A of this part.

Individuals engaged in the overall academic administration of an elementary or secondary school system include the superintendent or other head of the system and those of his assistants whose duties are primarily concerned with administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards and other aspects of the teaching program. In individual school establishments those engaged in overall academic administration include the principal and the vice principals who are responsible for the operation of the school. Other employees engaged in academic administration are such department heads as the heads of the mathematics department, the English department, the foreign language department, the manual crafts department, and the like. Institutions of higher education have similar organizational structure, although in many cases somewhat more complex.

Discretion means comparison and evaluation of possible courses of conduct, followed by a decision; independent choice, free from immediate direction or supervision with respect of matters of significance.

The provisions allow specific exemption information for academicians and teachers. See 541.2

The phrase "directly related to management policies or general business operations" can include: advising management, planning, negotiation, representing the agency, consulting,

safety direction, wage rate analysis, and systems analysis in computers. [WH Publication 1281; 541.205 (c)]

...An employee will not qualify for exception as an administrative employee if he devotes more than 20 percent...of his hours worked in the workweek to nonexempt work;... [WH Publication 1281; 541.209 (a)]

It is important to note that an employee will not qualify for this exemption if he is engaged in what is considered "production" activities. In order to be eligible for this exemption, it is necessary that the employee perform work which consists of "office or non-manual work" that is "directly related to management policies or general business operations" (29 C.F.C 541.2 (a)(1)) For example, in the recent case of Reiche State of New York (citation omitted) state policy investigators were determined by the U.S. 2nd Circuit Court of Appeals to be ineligible for this exemption as they were engaged in the "productive" work of the state police. This is a critical inquiry which must be made in every case where this exemption may apply.

Data processing related occupations are discussed in WH Publication 1281, sections 541.205 (c)(7), 541.303, 541.207 (c)(7), and 541.312.

Office or non-manual work directly related to management policies or general business operations of employer includes work such as advising management, planning, negotiating, representing agency, and business research and control.

If the employee is in charge of a functional department (may be 1-man department) such as: Credit Manager, Personnel Director, Purchasing Agent, Claims Agent, Buyer, Claims Adjustor, Safety Director, etc., and meets the other criteria, he/she may be exempt under "Administrative."

EXEMPT FROM FLSA OVERTIME PROVISIONS

III. PROFESSIONAL CHECKLIST

An employee who meets either the **“SHORT TEST”** or the **“LONG TEST”** for executives is exempt.

A. SHORT TEST QUESTIONS: An employee must meet all of the requirements in # 1 and # 3 and at least one of the options in # 2 to be exempt:

1. Is his/her weekly salary \$250 or more (\$13,000/year; \$1083.33/month) exclusive of board, lodging, or other facilities?
2. Is his/her primary duty:
 - a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, or
 - b. Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which he is employed, or
 - c. Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.
3. Includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor.

B. LONG TEST QUESTIONS: An employee must meet at least one of the options in # 1 and all of the requirements in #'s 2-5 in order to be exempt:

1. Is his/her primary duty:
 - a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, or
 - b. Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent

of the employee, or

- c. Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which he is employed, or
 - d. Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.
- 2. Does his/her work require the consistent exercise of discretion and judgment in its performance?
 - 3. Is his/her work predominantly intellectual (10) and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is it of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time?
 - 4. Does he/she devote at least 80 percent of his/her hours worked in the workweek to activities which are an essential part of the work described in the work outlined above?
 - 5. Is his/her weekly salary \$170 or more (\$8840/year; \$736.66/month) exclusive of board, lodging, or other facilities?

FOOTNOTES
“PROFESSIONAL CHECKLIST”

As distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.

"Predominantly intellectual" means that the job is varied and not routine mental, mechanical, manual, or physical work. In order for routine work to be exempt, it should be an essential part of and necessarily incident to the professional work.

This test applies to the type of thinking which must be performed by the employee. It seeks the more complex duties of interpretation and judgment which are characteristic of exempt professional work.

Generally speaking, professions meeting the requirement of "prolonged course of specialized intellectual instruction and study" include: Law, Actuarial Computation, Medicine, Engineering, Nursing, Architecture, Accounting, Teaching, Physical, Chemical or Biological Sciences, such as: Pharmacy, Registered or Certified Medical Technician. (WH Publication 1281; 504.3)

The following types of employees are generally categorized as "professional" employees who are exempt from the FLSA:

1. The so-called "learned" professions, such as medicine, law, and dentistry.
2. Artistic professions and architects or degreed urban planners, depending on job duties.
3. Registered nurses.
4. Accountants, depending on training and job duties, but not necessarily junior accountants or accounting clerks. [WP Publication 1281; 541.301(f)]
5. Engineers and scientists [WP Publication 1281; 541.301(e)(1)]

Data processing related occupations are discussed in WH Publication 1281, sections 541.205 (c)(7), 541.303, 541.207 (c)(7), and 541.312.